

Upper Clark Fork River Basin Steering Committee

Meeting Summary

April 23, 2008

Introductions

Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. Rep. Dan Villa is a new member of the Steering Committee appointed by DNRC Director Mary Sexton. Those in attendance included:

Members	Group/Organization Represented
Bob Benson	Clark Fork Coalition
Carol Fox	Natural Resource Damage Program (NRD)
Jim Dinsmore	Granite Conservation District
Rep. Jon Sesso	Butte-Silverbow
Rep. Dan Villa	AEEI/HD 86
Senator Dave Lewis	Lewis and Clark County/Senate District 42

Agency Personnel

Curt Martin	Montana Department of Natural Resources and Conservation
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Public

Darry Barton	Clark Fork River Technical Advisory Committee
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Staff

Gerald Mueller	Facilitator
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Agenda

- Review summary of the March 25, 2008 Meeting
- Updates
 - State of Georgetown Lake Application
 - Status of the Milltown Dam Water Rights
 - Basin Water Supply
 - Water Court Enforceable Water Right Decree Meetings
- Steering Committee Budget
- Basin Domestic Water Supply
- Public Comment
- Next Meeting

March 25, 2008, 2008 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Updates

State of Georgetown Lake Application - Gerald Mueller reported that the application was submitted by the Granite Conservation District to the Natural Resource Damage Program (NRDP) prior to the deadline on April 4, 2008. Carol Fox stated that the NRDP received applications for 14 projects requesting a total of \$21.8 million. The funding cap for this grant cycle is \$20 million. Some of the funds requested in the 14 projects may be for other years so

that the total request may not exceed the funding cap. NRDP will host a symposium on Tuesday, May 13, 2008 at 10:00 a.m. at the War Bonnet Inn in Butte to allow applicants to present their proposals to the Upper Clark Fork River Remediation and Restoration Advisory Council and to respond to Council member questions.

Status of the Milltown Dam Water Rights - Carol Fox reported that the Clark Fork Coalition applied to the NRDP in the current cycle for a grant to authorize the State to transfer up to \$1.4 million from the Upper Clark Fork River Basin Restoration Fund to the Milltown restoration account, to facilitate acquisition of NorthWestern Energy's (NWE's) lands and the associated water rights at the Milltown Dam. The appraised price of the land exceeds the \$1.4 million that NWE owes to settle the natural resource damages claims it owes pursuant to the Milltown Consent Decree. As explained in the Steering Committee's paper on the Milltown Dam water rights, after the dam ceases operation and is demolished and the State receives the proceeds from NWE's insurance policy, the State may exercise an option to acquire the land and water rights, thereby discharging NWE's \$1.4 million natural resource damage obligation at Milltown. The Consent Decree does specify when the dam would be considered "demolished", so it is not clear if the one year clock for the State to exercise its option has started.

Question - Would the \$1.4 million from the grant go to NWE?

Answer - No. The grant funds would go to the State to pay for a portion of its Milltown restoration costs.

Basin Water Supply - Curt Martin passed out copies of the current Surface Water Supply Index (SWSI) Values for Montana and a table summarizing Montana SNOTEL Snow/Precipitation Update Report for the sites in the upper Clark Fork River basin. See Appendix 2. The SWSI values for sub-basin above the confluence with the Blackfoot River (Area 17) are "slightly wet" and for the Blackfoot River sub-basin (Area 16) are "near average". As of April 22, 2008, the snow water equivalent for the entire basin is at 103% of average, and the year-to-date precipitation is at 95% of average.

Water Court Enforceable Water Right Decree Meetings - Because he was unable to attend this meeting, Jules Waber emailed to Mr. Mueller a short report on the meeting convened by the Montana Water Court regarding a possible enforceable water rights decree for Racetrack Creek. Water Court staff passed out the water rights book if people wanted it. They had maps showing ditch locations. They discussed water right priority and answered questions and listened to suggestions. Mr. Waber described the meeting as "quite civil".

Jim Dinsmore attended a similar meeting regarding an enforceable decree for Lower Willow Creek. In addition to Water Court Water Master Coleen Coyle and DNRC staff, about 20 Lower Willow Creek water users attended. In the early 1990's, the Water Court issued a temporary preliminary water right decree for Lower Willow Creek. To create an enforceable decree, the Water Court would convert this decree to a preliminary decree. To do this, DNRC would compile a list of all water rights in the Lower Willow Creek enforcement area and provide it to Water Judge Loble. Water right holders would have the opportunity to review this list and correct errors such as incorrect identifications of ditches and locations of points of diversion.

According to Ms. Coyle, the water right holders could correct these errors as a group. Apparently, if any of the corrections proved to be controversial, all the right holders under the decree would have to be notified of them. The corrected list of water rights in the preliminary decree could be used by a water commissioner to enforce water rights. Water rights in Lower Willow Creek would be enforced without any connection to other basins such as Flint Creek. Ms. Coyle also stated that at least 15 years would be necessary to convert the preliminary decree to a final decree. Mr. Dinsmore stated that he is not sure how the enforcement area was defined and whether and how the error correcting would fit in with DNRC's water right change process.

Comment by Curt Martin - The change of use process applies to water right permits issued after passage of the 1973 Water Use Act. Correcting errors resulting from the DNRC claims examination that preceded the temporary preliminary decree would not require change applications.

Question - Who would have the responsibility to notify the other water right holders if a change would prove to be controversial?

Answer by Jim Dinsmore - I am not sure how the notification process would work. Apparently, if you find an error in your water right, you would have the notification responsibility. I don't know what happens if you find a controversial error in someone else's water right.

Comment by Jim Dinsmore - The temporary preliminary decree did not include three large irrigation wells, at least two of which were drilled prior to 1973.

Response by Curt Martin - Wells have not been included in decree tabulations to date. Presumably, they will have to be included before final decrees are issued.

Steering Committee Budget

FY108 - Curt Martin stated that about \$4,000 of Steering Committee funds remain uncommitted and unspent for the current fiscal year. These funds must be applied to a one-time rather than a continuing purpose. After the March 25, 2008 meeting, he asked his DNRC colleagues for ideas for possible uses of these funds. Ideas included paying for aerial photography or helping with the expenses of Dr. Susan Gilbretz, a Professor of Geography at Montana State University, Billings, who is surveying local people about their perspectives on the progress of the Milltown Dam cleanup. Mr. Martin stated that Rich Moy has approved purchase of a projector for use with a lap top computer using Steering Committee funds. The projector would be kept at the DNRC Missoula Water Resources offices and would be available for Steering Committee use.

Question - How much would the projector cost?

Answer by Curt Martin - About a \$1,000.

Comment by Gerald Mueller - After the last meeting, I contacted Dennis Workman to see if he needed aerial photography or other supplies and equipment for the work he will do for the NRDP regarding tributary reconnections with the mainstem of the Clark Fork River. Mr. Workman did not identify any such needs.

Comment - I am not sure that surveying people about their perspectives on the removal of Milltown Dam is consistent with the Steering Committee's mission.

Steering Committee Action - Those members present agreed that funding Dr. Gilbretz' work would not be appropriate. They agreed with purchase of the lap top projector because one is often needed in Steering Committee meetings.

FY2010-11 - Gerald Mueller reported at the last Steering Committee meeting that Rich Moy proposed including \$20,000 per year for the coming biennium in the DNRC budget. Mr. Mueller provided the following outline of how a \$20,000 annual budget for the Steering Committee might be allocated during 2010-2011. This outline will be considered at the May Steering Committee meeting.

Coordinator

Salary -	\$12,000.00
Travel & per diem -	\$1,000.00
Administrative expenses (copying, postage, telephone, supplies, etc.) -	\$1,000.00

Meeting Expenses

Room rental (9 meetings @ \$100) -	\$900.00
Member travel & lunches -	\$3,100.00

<u>Publications & Projects</u>	\$2,000.00
<u>Total</u>	\$20,000.00

Comment - Something we might do at some point is to take a tour of the Clark Fork River superfund restoration activities.

Domestic Water Use Growth

Although he intended to do so, Mike McLane was unable to attend this meeting to discuss options for addressing Seeley Lake's expanding water use in a manner consistent with the existing basin closure. This topic will be discussed at the May Steering Committee meeting.

Growing Communities Doctrine - Mountain Water Company, the privately owned water company that supplies domestic water in Missoula, raised the Growing Communities Doctrine before the Water Policy Interim Committee (WPIC). Attached in Appendix 3 are two documents considered by WPIC regarding it. The first is a February 19, 2008 memorandum by Greg Petesch, Director of Legal Service in the Legislative Services. This memo summarizes the Growing Communities Doctrine as follows:

The Doctrine appears to contain two primary elements. It gives municipal water suppliers more time to perfect their water rights by allowing the rights to be held for future needs and therefore allowing more time to put the water to beneficial use. In addition, the Doctrine usually exempts municipal water rights from loss through nonuse. The combination of these two elements allow a municipal water supplier to hold a priority date for a water right in anticipation of reasonably foreseeable future needs in the municipality without the risk of loss of the water right.

The memo also notes that "Montana has not explicitly adopted the Growing Communities Doctrine."

The second document is an exchange of letters between Stephen R. Brown, an attorney for Mountain Water Company, and Bill Schultz, DNRC's Missoula Regional Water Resources Manager. Mr. Brown's December 26, 2007 letter argues that the Growing Communities Doctrine is applicable in Montana, that it is inherent in Mountain Water Company's municipal water rights, and that it implicitly authorizes the expanded use of these rights over time. In his January 31, 2008 response, Bill Schultz wrote that DNRC disagrees that the Montana Water Use Act provides for special consideration of municipal water rights based on the Growing Communities Doctrine and that Mountain Water change of use applications will be limited by historic beneficial use of each water right claim and permit being changed.

Mr. Mueller noted that the state of Washington recently passed a statute enacting the Growing Communities Doctrine and establishing water use efficiency standards and other requirements for municipal water suppliers. Mountain Water Company is considering requesting legislation to enact this doctrine in Montana.

Mr. Mueller suggested that the Steering Committee consider as a project for the next fiscal year surveying cities and towns in the basin to determine their water supply situation. Do they have adequate water to meet current and future needs? This survey could be conducted through either the UM Department of Geography or Environmental Studies.

Question - This survey might be included in a policy paper addressing the issue of meeting the growing need for domestic water. Would Mr. Mueller provide us an outline of such a paper?

Steering Committee Action - Those members present asked Mr. Mueller to explore a possible project using a UM student and to prepare an outline of a policy paper addressing the issue of meeting the growing need for domestic water supplies for the May Steering Committee meeting.

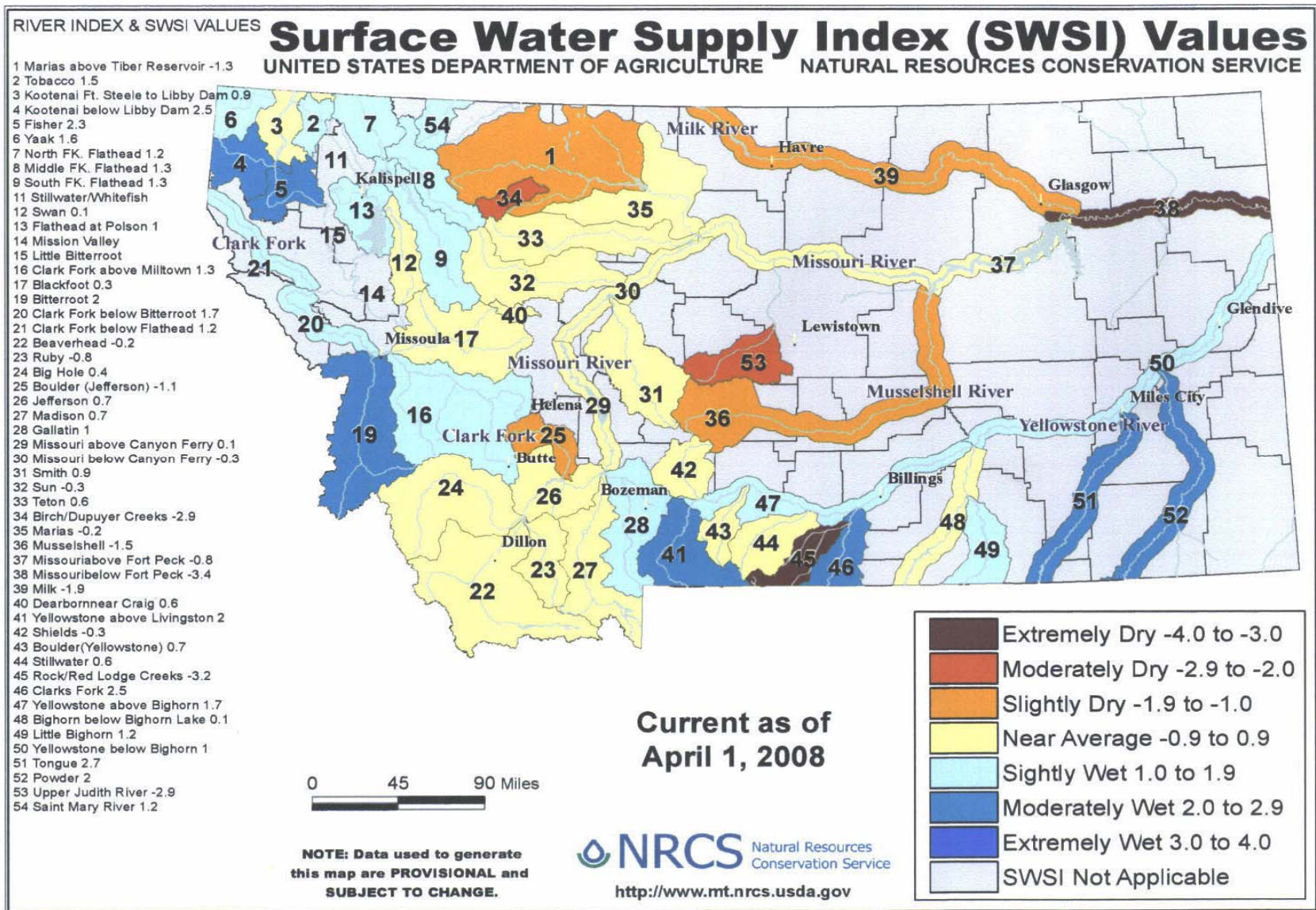
Public Comment

There was no public comment.

Next Meeting

The next meeting is tentatively scheduled for Wednesday, May 14, 2008 in Deer Lodge. The agenda will include Mike McLane's presentation on the Seeley Lake water supply alternatives and the basin water supply picture.

Appendix 2



Montana SNOTEL Snow/Precipitation Update Report

Based on Mountain Data from NRCS SNOTEL Sites

Provisional data, subject to revision

Data based on the first reading of the day (typically 00:00) for Tuesday, April 22, 2008

Basin Site Name	Elev (ft)	Snow Water Equivalent			Year-to-Date Precipitation		
		Current (in)	Average (in)	Pct of Avg	Current (in)	Average (in)	Pct of Avg
UPPER CLARK FORK RIVER BASIN							
BARKER LAKES	8250	16.2	16.2	100	19.4	19.2	101
BASIN CREEK	7180	7.6	9.9	77	12.3	11.2	110
BLACK PINE	7210	13.5	12.1	112	15.8	16.9	93
COMBINATION	5600	5.3	2.3	230	10.7	10.8	99
COPPER BOTTOM	5200	6.5	7.4	88	17.4	18.0	97
COPPER CAMP	6950	54.6	N/A	*	33.1	37.0	89
LUBRECHT FLUME	4680	-M	1.0	*	-M	11.7	*
NEVADA RIDGE	7020	17.4	15.8	110	17.4	17.7	98
N FK ELK CREEK	6250	11.3	10.5	108	14.5	16.9	86
NORTH FORK JOCKO	6330	47.4	45.4	104	51.7	54.8	94
PETERSON MEADOWS	7200	10.9	11.4	96	14.6	13.7	107
ROCKER PEAK	8000	13.8	16.0	86	14.5	17.6	82
SKALKAHO SUMMIT	7250	28.2	25.6	110	28.2	26.9	105
STUART MOUNTAIN	7400	36.3	33.8	107	33.6	37.3	90
WARM SPRINGS	7800	23.0	23.5	98	23.3	26.3	89
Basin-wide percent of average		103			95		